



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 35**

June 18, 2009 – Offered by Representative SOLETSKI.

1 **AN ACT** *to create* 118.134 of the statutes; **relating to:** the use of race-based
2 nicknames, logos, mascots, and team names by school boards, providing an
3 exemption from emergency rule procedures, requiring the exercise of
4 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits discrimination against pupils on a number of grounds, including race and ancestry. This substitute amendment provides that a school district resident may object to a school board's use of a race-based nickname, logo, mascot, or team name by filing a complaint with the state superintendent of public instruction (state superintendent). The state superintendent must schedule a hearing on the complaint, at which the school board has the burden of proving by clear and convincing evidence that the use of the race-based nickname, logo, mascot, or team name does not promote discrimination, pupil harassment, or stereotyping. If the state superintendent finds in favor of the complainant, the state superintendent must order the school board to terminate its use of the race-based nickname, logo, mascot, or team name within 12 months after issuance of the order. A school board is subject to a forfeiture of not less than \$100 nor more than \$1,000 for each day that it uses the race-based nickname, logo, mascot, or team name in

violation of the order. The decision of the state superintendent is subject to circuit court review.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 118.134 of the statutes is created to read:

2 **118.134 Race–based nicknames, logos, mascots, and team names. (1)**

3 Notwithstanding s. 118.13, a school district resident may object to the use of a
4 race–based nickname, logo, mascot, or team name by the school board of that school
5 district by filing a complaint with the state superintendent. The state
6 superintendent shall notify the school board of the receipt of the complaint and
7 schedule a contested case hearing within 45 days after the complaint is filed.

8 **(2)** At the hearing, the school board has the burden of proving by clear and
9 convincing evidence that the use of the race–based nickname, logo, mascot, or team
10 name does not promote discrimination, pupil harassment, or stereotyping, as
11 defined by the state superintendent by rule.

12 **(3)** (a) The state superintendent shall issue a decision and order within 45 days
13 after the hearing. If the state superintendent finds that the use of the race–based
14 nickname, logo, mascot, or team name does not promote discrimination, pupil
15 harassment, or stereotyping, the state superintendent shall dismiss the complaint.
16 Except as provided in par. (b), if the state superintendent finds that the use of the
17 race–based nickname, logo, mascot, or team name promotes discrimination, pupil
18 harassment, or stereotyping, the state superintendent shall order the school board
19 to terminate its use of the race–based nickname, logo, mascot, or team name within
20 12 months after issuance of the order.

1 (b) 1. In this paragraph, “extenuating circumstances” includes circumstances
2 in which the costs of compliance with an order issued under par. (a) pose an undue
3 financial burden on the school district and circumstances in which the work or the
4 requirements for bidding a contract to complete the work required to bring the school
5 district into compliance with the order issued under par. (a) cannot be completed
6 within 12 months after the issuance of the order.

7 2. If, at the hearing under sub. (2) or after a decision and order have been issued
8 under par. (a), the school board presents evidence to the state superintendent that
9 extenuating circumstances render full compliance with the decision and order
10 within 12 months after the issuance of that decision and order impossible or
11 impracticable, the state superintendent may issue an order to extend the time within
12 which the school board must terminate its use of the race-based nickname, logo,
13 mascot, or team name. The extension authorized under this subdivision shall not
14 exceed 24 months and shall apply only to those portions of the decision and order to
15 which extenuating circumstances apply.

16 (c) Decisions of the state superintendent under this subsection are subject to
17 judicial review under ch. 227.

18 (4) The state superintendent shall promulgate rules necessary to implement
19 and administer this section.

20 (5) Any school board that uses a race-based nickname, logo, mascot, or team
21 name in violation of sub. (3) shall forfeit not less than \$100 nor more than \$1,000.
22 Each day of use of the race-based nickname, logo, mascot, or team name in violation
23 of sub. (3) constitutes a separate violation.

24 **SECTION 2. Nonstatutory provisions.**

(1) The department of public instruction shall submit in proposed form the rules required under section 118.134 (4) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection.

(2) Using the procedure under section 227.24 of the statutes, the department of public instruction may promulgate rules required under section 118.134 (4) of the statutes, as created by this act, for the period before the effective date of the rules submitted under subsection (1), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(END)